HON'BLE SRI G.S.SINGHVI, THE CHIEF JUSTICE

AND
HON'BLE SRI JUSTICE G.BHAVANI PRASAD

W.A.NO.149 OF 2006

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Between:

P.Keshava Reddy and another

...Appellants

AND

The Municipal Commissioner

Manchiryala Municipality,

Manchiryala town, Adilabad District and 2 others.

...Respondents

::JUDGMENT::

Counsel for the Petitioner : Smt. Akella Padma
Counsel for respondents No.1&2: Sri Polisetti Radhakrishna,
Counsel for Respondent No. 3: Sri Ramanna Dora

Dated 15.2.2006

Per Sri G.S.Singhvi, CJ

This is an appeal for setting aside order dated 22.2.2005 passed by the learned Single Judge in W.P.No.22104 of 2004, whereby he refused to nullify the proceedings Roc.No.535/A1/2004 dated 29.10.2004 issued by respondent No.1 on the ground that earlier order passed by the officer concerned in favour of the writ petitioners was vitiated due to gross violation of the rules of natural justice.

A perusal of the record shows that mutation in respect of godown bearing Door No.6-3 (old) corresponding to new number 6-8 at vegetable market, Manchiryala, Adilabad District was entered in the name of Sri P.Mukunda Reddy (husband of respondent No.3). After the death of Sri P.Mukunda Reddy on 23.2.1986, the property was mutated in the name of respondent No.3. On 8.5.2001, appellant No.1 P.Keshava Reddy made an application to Commissioner of Manchiryala Municipality (hereinafter described as 'the Municipality') to mutate his name in place of respondent No.3. Soon thereafter, he filed W.P.No.13017 of 2002 before this

Court with the complaint that the application made by him for mutating his name in the relevant record was not being decided by the concerned authority. The writ petition was dismissed by the learned Single Judge but in the writ appeal, a Division Bench of this Court directed the concerned authority to dispose of the representation of petitioner No.1. In compliance of the direction given by the Division Bench, the Municipal Commissioner recorded the name of the petitioners in place of respondent No.3, albeit without giving her action oriented notice and an opportunity of hearing.

Respondent No.3 challenged the changes made in the records by filing an appeal, which was registered as Appeal No.252 of 2003. She too moved this Court by filing W.P.No.6343 of 2004 with the complaint that the appeal is not being disposed of. By an order dated 5.4.2004, the learned Single Judge directed the appellate authority to decide the appeal by respondent No.3 within a period of three months.

It is borne out from the record that while the appellants had not impleaded respondent No.3 as a party to W.P.No.13017 of 2002 and W.A.No.1433 of 2003, the latter did implead them as parties in W.P.No.6343 of 2004. The appellants were aware of the proceedings of W.P.No.6343 of 2004 and the direction given by the learned Single Judge for disposal of the appeal filed by respondent No.3 within a period of three months, but they did not bother to find out the fate of the appeal, which was finally allowed by the appellate authority on 29.10.2004.

On coming to know of the adverse order passed by the appellate authority, the appellants invoked the jurisdiction of this Court under Article 226 of the Constitution of India with the prayer that the impugned order may be quashed on the ground of violation of rules of natural justice. They pleaded that the appeal had been decided without giving them notice and opportunity of hearing as required by Rule 7 of the Andhra Pradesh Municipalities (Receipts and Disposal of Appeals) Rules 1967.

The learned Single Judge noted that even though the appeal by respondent No.3 had been decided without giving opportunity of hearing to the appellants, order dated 29.10.2004 did not call for interference because the original order passed by the Municipal Commissioner in favour of appellant No.1 was nullity.

Smt. Akella Padma, learned counsel for the appellants made strenuous efforts to persuade us to upset the well reasoned order passed by the learned Single Judge by arguing that the decision of the appeal filed by respondent No.3 without issuing

notice to the appellants and without giving them effective opportunity of hearing was liable to be declared as void. She argued that in terms of Rule 7 of 1967 Rules, it is mandatory for the appellate authority to give notice to all the parties and decide the appeal after giving them opportunity of hearing, and, as the appellant authority did not comply with the mandate of the Rule, the learned Single Judge should have set aside order dated 29-10-2004.

The argument of the learned counsel appears attractive but we are not inclined to entertain the same because it is settled that in exercise of power under Article 226 of Constitution of India, the High Court will not pass an order, which would result in restoration of an illegal order. A re-captualisation of facts show that order dated 14.9.2004 was passed by municipal authorities in favour of appellant No.1 without giving notice and opportunity of hearing to respondent No.3. Therefore, the finding recorded by the learned Single Judge that the said order was nullity cannot be termed as erroneous. As a corollary, it must be held that even though order dated 29.10.2004 was passed by the appellate authority without giving opportunity of personal hearing to the appellants, the same did not warrant interference under Article 226 of the Constitution of India and the learned Single Judge did not commit any error by refusing to nullify the same.

Notwithstanding the aforementioned conclusion, we are of the view that while adjudicating the appeal filed by respondent No.3 and holding that order dated 14.9.2004 passed by the competent authority was vitiated due to violation of the rules of natural justice, the proper course available to the appellate authority was to remit the matter to the original authority for fresh adjudication of the application filed by the appellants. In fact, learned counsel for respondent No.3 fairly concedes to this position. It appears to us that this plea was not raised before the learned Single Judge, else he would have directed the competent authority to decide the application filed by appellant No.1 afresh after giving opportunity of hearing to the parties.

Sri Ramanna Dora, learned counsel for respondent No.3 fairly states that the Court may direct the concerned authority to decide the application of appellant No.1 afresh.

In the result, the appeal is dismissed subject to the modification of the order under challenge that the competent authority shall decide the application filed by appellant

No.1 for change of the mutated entries after giving action oriented notice and effective opportunity of hearing to all the parties. The officer concerned is directed to pass fresh orders within a maximum period of four months from the date of receipt of certified copy of this order.

G.S.SINGHVI, CJ

Dt.15.2.2006

G.BHAVANI PRASAD,J

Msv/svs